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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 ) No. 45295  
 Plaintiff-Respondent- )  
 Cross Appellant, ) Ada County Case No.  
 ) CR-FE-2016-5895  
 v. )  
 )  
 RYAN KELLY MATTHEWS, )  
 )  
 Defendant-Appellant- )  
 Cross Respondent. )  
 )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF PLAINTIFF-RESPONDENT-CROSS APPELLANT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

\_\_\_\_\_  
**HONORABLE MELISSA MOODY**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Ryan Kelly Matthews appeals his unified sentence of seven years, with three years fixed, imposed by the district court after he pled guilty to felony possession of a controlled substance. Matthews argues the district court imposed an excessive sentence.

The state cross-appeals the district court's decision on restitution. The district court abused its discretion when it refused to require Matthews to pay the restitution requested by the state on the sole basis that it would infringe Matthews's constitutional rights.

### Statement Of The Facts And Course Of The Proceedings

On May 6, 2016, officers arrested Ryan Kelly Matthews pursuant to an arrest warrant. (R., p.170.) As part of the intake procedure at the jail, an officer conducted a pat down search of Matthews and found "2 clear plastic baggies which contained a white crystalline substance that NIK tested positive for Methamphetamine." (PSI, p.3.) The drugs were located in Matthews's front right pocket. (PSI, p.4.) The state charged Matthews with felony possession of a controlled substance. (R., pp.12-13, 123-24.)

Matthews moved to suppress the drug evidence. (R., pp.79-81, 141.) After holding a hearing on Matthews's motion to suppress, the district court denied it. (R., pp.169-71.) Shortly thereafter, Matthews changed his plea to guilty. (R., p.180.) At the change of plea hearing, Matthews's counsel informed the district court of the agreement reached with the state:

Your Honor, this is going to be quite straightforward, as far as a plea goes. This is simply to possessing a controlled substance. It's going to be open recommendations. There will be no Information Part II.

The State has made it very clear that they are going to be asking for the cost of prosecution in this case. It's somewhere in the three to \$500 range. And that - -

*Mr. Matthews would agree to that.* Beyond that, Your Honor, that's the extent to [sic] the agreement in this case.

(5/5/2017 Tr., p.51, L.18 – p.52, L.5 (emphasis added).)

At Matthews's sentencing hearing, consistent with the agreement, the state requested that the district court order Matthews to pay \$524.12 "for the prosecution costs in this case" and an additional \$200 "for the testing of drugs." (6/30/2017 Tr., p.65, Ls.8-11.) Matthews's counsel stated he had no objection to the \$200 for the drug testing but did not mention the other \$524.12 for the cost of prosecution. (6/30/2017 Tr., p.70, Ls.6-9.) The district court refused to impose restitution for the \$524.12:

THE COURT: So one thing that you said in the presentence report that I agree with - - and I wrote this down. This is a quote from you. You said, "My only concern with my plea bargain is that I have to pay three to \$500 for having a hearing to suppress evidence. I would rather have to pay court costs than have to pay for exercising my constitutional right."

And that jumped out to me because I agree with you on that. I am not going to impose the restitution that you agreed to, frankly, for prosecution costs in the amount of \$524.12.

(6/30/2017 Tr., p.77, Ls.6-17.) The district court imposed a unified sentence of seven years, with three years fixed. (R., pp., 191-94.)

Matthews filed a notice of appeal timely from the judgment of conviction. (R., pp.195-98.) The state timely cross-appealed the decision on restitution. (R., pp.226-29.)

## ISSUES

Matthews states the issue on appeal as:

Did the district court abuse its discretion when it imposed upon Mr. Matthews a unified sentence of seven years, with three years fixed, considering the mitigating factors that exist in this case?

(Appellant's brief, p.3)

The state rephrases the issue on appeal as:

Has Matthews failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with three years fixed, upon his guilty plea to felony possession of a controlled substance?

The issue on cross-appeal is:

Did the district court abuse its discretion when it refused to order payment of the prosecution costs requested by the state on the sole basis that doing so would infringe Matthews's constitutional rights?

## ARGUMENT ON APPEAL

### Matthews Has Failed To Establish That The District Court Abused Its Sentencing Discretion

#### A. Introduction

Matthews asserts the sentence imposed by the district court is excessive in light of the nature of his offense and his character and argues his sentence was not necessary to protect the public interest. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

#### B. Standard Of Review

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008).

#### C. The District Court Did Not Abuse Its Sentencing Discretion

The district court did not abuse its discretion when it imposed a unified seven-year sentence, with three years fixed. It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. The district court has the discretion to weigh those objectives and give them differing weights when deciding upon the sentence. Id. at 9, 368 P.3d at 629; State v. Moore, 131 Idaho 814, 825, 965 P.2d 174, 185 (1998) (court did not abuse its

discretion in concluding that the objectives of punishment, deterrence and protection of society outweighed the need for rehabilitation). “In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.” McIntosh, 160 Idaho at 8, 368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

As the district court explained to Matthews before he pled guilty (5/5/2017 Tr., p.56, L.20 – p.57, L.7), the maximum prison sentence for one count of felony possession of a controlled substance is seven years and a \$15,000 fine, I.C. § 37-2732(c). The district court imposed a unified sentence of seven years, with three years fixed, which falls within the statutory limit. (R., pp.191-94.) Furthermore, Matthews’s sentence is appropriate in light of his criminal record, which shows his disregard for the law and the well-being of others. Matthews has three prior felony convictions, including two convictions for violent crimes. Specifically, he has two convictions for aggravated assault and one conviction for passing counterfeit Federal Reserve notes. (PSI, pp.4-6.)

Matthews also has a proven inability to comply with court-ordered supervision. He has been found in violation of probation on three different occasions. (Id.) And the officers arrested Matthews in this case because he had absconded his parole supervision. (R., p.170.) As Matthews’s parole officer explained: “Ryan Matthews has shown to have no interest in abiding by the rules of community supervision. He avoids supervision and is not receptive to attempts to hold him accountable for his actions. I believe he poses a distinct threat to the community and that he should spend the rest of his sentence in a secure facility.” (PSI, p.7.)

Matthews's claim that he "posed no risk to the public in this case" is contradicted by the record. (Appellant's brief, p.5.) One of the officers who arrested Matthews testified that they found Matthews after the woman Matthews had been living with called the police. (4/17/2017 Tr., p.34, L.16 – p.36, L.23.) "[S]he was concerned for her safety and the safety of her children" because "Mr. Matthews was staying at her residence and bringing in some unsavory characters to her house, and [she] suspected that he was also using narcotics." (4/17/2017 Tr., p.35, Ls.2-8.)

At sentencing, the state addressed Matthews's criminal history and the danger he posed to other members of society. (6/30/2017 Tr., p.65, L.2 – p.70, L.2 (Appendix A).) After considering the relevant information, the district court properly imposed a unified sentence of seven years, with three years fixed. (R., pp.191-94.) The state submits that Matthews has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts in support of its argument on appeal. (Appendix A.)

## ARGUMENT ON CROSS-APPEAL

### The District Court Abused Its Discretion When It Refused To Order The Restitution Requested By The State

#### A. Introduction

The district court refused to require Matthews to pay \$524.12 for prosecution costs as requested by the state based solely on a legal rationale that is inconsistent with this Court's precedent. That constitutes an abuse of discretion.

#### B. Standard Of Review

A district court's decision whether to order restitution is reviewed for an abuse of discretion. State v. Kelley, 161 Idaho 686, 691, 390 P.3d 412, 417 (2017). A district court abuses its discretion when it does not act "consistently with relevant legal standards." Id.

#### C. The District Court Abused Its Discretion When It Decided Not To Require Matthews To Pay The \$524.12 In Prosecution Costs Requested By The State

Idaho law allows a district court, "[u]pon conviction of a felony or misdemeanor violation of the Uniform Controlled Substances Act," to "order restitution for costs incurred by law enforcement agencies in investigating the violation." I.C. § 37-2732(k). "By its plain terms, restitution under section 37-2732(k) is discretionary, as it states that 'the court may order restitution[.]'" State v. Kelley, 161 Idaho 686, 691, 390 P.3d 412, 417 (2017) (brackets in original). But in deciding whether to award restitution and in what amount, the district court must act "consistently with the relevant legal standards." Id.; see State v. Cardoza, 155 Idaho 889, 895, 318 P.3d 658, 664 (Ct. App. 2014) (vacating restitution decision because "[t]he district court erred by concluding that I.C. § 37-2732(k) did not authorize restitution for the prosecutor's salary for time expended on this case").

The district court abused its restitution discretion here by acting inconsistently with the relevant legal standards—namely, Idaho Supreme Court precedent. Despite acknowledging that Matthews had agreed to pay the \$524.12 restitution amount, the district court did not require Matthews to pay it. (6/30/2017 Tr., p.77, Ls.6-17.) The only rationale expressed by the district court for this decision was that it agreed with Matthews’s statement that ““I would rather have to pay court costs than have to pay for exercising my constitutional right.”” (Id.) The district court’s refusal to impose the agreed-upon restitution on the sole basis that it would encroach on Matthews’s constitutional rights—presumably because it would require Matthews “to pay for exercising [his] constitutional right” to defend himself (id.)—is inconsistent with this Court’s precedent. See Kelley, 161 Idaho at 689-91, 390 P.3d at 415-17.

In Kelley, this Court addressed whether § 37-2732(k) violated the Sixth Amendment rights to stand trial and present a defense. 161 Idaho at 689, 390 P.3d at 415. The defendant argued, consistent with the district court’s rationale in the case at hand, that ““[k]nowing he will be required to pay for each stage of the process will necessarily result in a chilling effect upon the assertion of his rights.”” Kelley, 161 Idaho at 690, 390 P.3d at 416. This Court’s response was clear: “We disagree.” Id. Specifically, this Court held that “section 37-2732(k) does not impermissibly chill Sixth Amendment rights to stand trial and present a defense.” Kelley, 161 Idaho at 691, 390 P.3d at 417.

The district court’s refusal to impose on Matthews the requested restitution costs on the sole basis that it would infringe his constitutional rights cannot be reconciled with this Court upholding § 37-2732(k) as constitutional in Kelley. The district court thus abused its discretion. See State v. Ehrlick, 158 Idaho 900, 910, 354 P.3d 462, 472 (2014) (holding district court abused its discretion where its decision was inconsistent with Idaho Supreme Court precedent). Because

the district court erred in concluding the agreed-upon restitution would infringe Matthews's constitutional rights, "this matter must be remanded for the district court to reconsider the State's restitution request." Cardoza, 155 Idaho at 895, 318 P.3d at 664.

CONCLUSION

The state respectfully requests that this Court affirm Matthews's sentence, vacate the district court's order of restitution, and remand the case to the district court to reconsider the amount Matthews must pay in restitution.

DATED this 5th day of April, 2018.

/s/ Jeff Nye

JEFF NYE

Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 5th day of April, 2018, served a true and correct copy of the foregoing BRIEF OF PLAINTIFF-RESPONDENT-CROSS APPELLANT by emailing an electronic copy to:

ANDREA W. REYNOLDS

DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Jeff Nye

JEFF NYE

Deputy Attorney General

JN/dd

# APPENDIX A

<p style="text-align: center;">65</p> <p>1 MR. NAUGLE: Thank you.  2 Your Honor, the State's original offer  3 in this case was for an imposed prison sentence of  4 seven years, with three years fixed and four years  5 indeterminate. I still think that that sentence  6 is appropriate in this case. And I'll explain  7 why.  8 I'll ask for restitution in the amount  9 of \$724.12. Two hundred of that is for the  10 testing of drugs in this case. \$524.12 is for  11 prosecution costs in this case.  12 Those costs are high, given the  13 significant amount of work that the State had to  14 do in preparation of the motion to suppress and  15 the numerous hearings in this case. The State  16 believes that that is appropriate, given the lack  17 of merit with the motion to suppress and the  18 significant amount of work that had to be  19 extended.  20 I also think public defender  21 reimbursement of \$250 would be appropriate, given  22 the significant amount of time and effort that  23 went into the handling of this case.  24 He has prior misdemeanor convictions  25 for possession of a controlled substance from 1997</p>	<p style="text-align: center;">66</p> <p>1 to 1999. He had a DUI, which it looks like may  2 have been dismissed pursuant to a withheld  3 judgment in 2009.  4 He has a felony conviction for  5 aggravated assault in 2000. He violated probation  6 in that case and had his sentence imposed.  7 And then he had a passing counterfeit  8 notes, a federal charge, that was -- for which he  9 was convicted in 2002.  10 He had a domestic violence and an  11 aggravated assault in 2008. He violated probation  12 in that case and had his sentence imposed.  13 And so, in this case, the defendant was  14 detained on an agent's warrant for absconding from  15 parole, and methamphetamine was found in his  16 pocket. And so you have somebody -- you have kind  17 of this dichotomy you have a crime that is not the  18 most serious crime in the world. He had a small  19 amount of methamphetamine on him. It is a felony  20 crime, and it's a serious one. But, you know, in  21 the grand scheme of things, it's not -- I think  22 it's not one of the worst crimes we see.  23 But, on the other hand, you have  24 somebody who has proven to be terrible at  25 probation, terrible on parole. You have someone</p>
<p style="text-align: center;">67</p> <p>1 who tends to be violent when they're using drugs.  2 And I think that part of that can be  3 seen in this case as well. You had him living in  4 a place where he was kind of hiding out from his  5 probation officer, his parole officer. And the  6 woman with whom he was living at the time calls  7 the PO and says, "Look, you have got to get him  8 out of here. He's dangerous. I'm worried for  9 myself, and the safety of myself and my kids."  10 So this is the kind of thing you see  11 from Mr. Matthews when he starts using drugs.  12 It's not just that he is a danger to himself  13 because he's putting poison in his body, he's a  14 danger to other people because he becomes violent  15 when he does.  16 And that's why that I think the prison  17 sentence is appropriate in this case. And there  18 are other reasons. As you can see from the PSI,  19 there are two distinctly different stories about  20 the circumstances that were surrounding  21 Mr. Matthews's performance on parole and what led  22 to his arrest in May of '16.  23 To hear Mr. Matthews tell it in the  24 PSI, you would think Mr. Matthews was doing fairly  25 well. He reached out to his probation officer,</p>	<p style="text-align: center;">68</p> <p>1 but just didn't get enough time to straighten  2 things out before the police came and plucked him  3 out of his girlfriend or wife's residence. He  4 awoke from a fog. He might have been given some  5 strange drink that someone gave to him, and he  6 doesn't have much memory of the whole incident.  7 The actual story is quite different.  8 Mr. Matthews had been absconding from probation or  9 parole for months, when his wife or girlfriend  10 called to tell the PO that he had been using  11 again. She didn't feel safe. And this was  12 probably a wise choice, given Mr. Matthews's past  13 and his tendency to use words and physically  14 threaten and harm the people -- the women with  15 whom he's living at the time.  16 And if you listen to any of the jail  17 calls made by Mr. Matthews, if you read his  18 statement in the PSI, it is, to me, pretty clear  19 why Mr. Matthews keeps committing these crimes.  20 He is one of these people -- and we see a lot of  21 these people that are similar to Mr. Matthews in  22 attitude. It's this attitude that nothing is my  23 fault, that all of this stuff is happening to me,  24 that either his attorney is the one that's giving  25 him a raw deal, or it's somebody slipped a mickey</p>

1 in his drink, or some unknown stranger put meth in  
2 his pocket while he was passed out.

3 It's this kind of attitude, that "I  
4 didn't do anything wrong," and at the same time  
5 saying, "I take full responsibility for my  
6 actions." But the words don't mean that. The  
7 words that he says don't equate with that.

8 So, at the end of the day, in the  
9 State's view, I think Mr. Matthews is someone who  
10 has proven to be dangerous within the community.  
11 He does not submit to supervision well. He  
12 doesn't -- he does just enough to fly under the  
13 radar, and he only complies when he absolutely has  
14 to.

15 He -- I think that, at this point, his  
16 fourth felony conviction, three of which are  
17 violent crimes, all of which somewhat had some  
18 undertone of drug use, and this continued use of  
19 methamphetamine, his lack of accountability, his  
20 complete unwillingness to submit to probation or  
21 supervision of any kind, make him a penitentiary  
22 candidate despite the fact that this is just a  
23 simple possession case.

24 And so that's why I'm recommending the  
25 prison sentence today of three years fixed, four

1 years indeterminate, and other financial  
2 punishments as well.

3 THE COURT: Thank you, Mr. Naugle.  
4 Mr. Bailey?

5 MR. BAILEY: Thank you, Your Honor.  
6 Just a couple of quick housekeeping  
7 matters, we don't have any objection to the  
8 restitution with regards to the testing. I think  
9 that's \$200.

10 A couple of things that Mr. Naugle  
11 touched on that I would like to follow up on,  
12 Your Honor. One is talking about the jail calls.  
13 I had an occasion, in this case, to listen to a  
14 number of jail calls. And there's a certain  
15 amount of what Mr. Naugle says that has some merit  
16 to it. But a couple of things that jumped out to  
17 me in those jail calls, profound calls between  
18 Mr. Matthews and his mother, who is here in the  
19 courtroom today. She's right back there.

20 Your Honor, I can't tell you how  
21 impressed I was with Ms. Wilson. Certainly not an  
22 enabler, very direct, and let him know exactly --  
23 really, in my view, good advice, the exact advice  
24 that you would want to hear from your mom.

25 And I told him repeatedly, "You should

1 listen to that woman because she's right on point  
2 with all of this stuff."

3 He has a great family, with tons of  
4 support. You saw the letters of support that he  
5 has behind him. And so it is a little bit of a  
6 head-scratcher that at the age of 36, Mr. Matthews  
7 finds himself before this court with yet another  
8 charge.

9 And, certainly, in speaking with him, I  
10 think he's aware. And when he pled guilty to this  
11 crime, I don't think I could have put it better,  
12 in that he's too old to be doing this stuff. He  
13 recognizes that. And, frankly, I think a lot of  
14 that comes from what his mom is pointing out as  
15 well. And so it's not like he's unaware of this,  
16 Your Honor.

17 And, frankly, if he is able to get the  
18 upper hand on his drug use and abstain from that  
19 activity, I think he could be a successful person  
20 out in the community. He certainly has plenty of  
21 potential. He's not a dummy. He can get work.  
22 He tells me that he has work waiting for him with  
23 Lula Grace, who is also here in the courtroom.

24 And so, if given the opportunity and  
25 he's able to stay away from not just the drug use

1 but also the crowd that he ends up sort of  
2 devolving into and getting mixed up in the drama  
3 there, I think he could be successful.

4 Now, the issue with the parole officer,  
5 Your Honor, I know that this court sees folks come  
6 in for reviews, and they always say, "Well, you  
7 know, I have tried to call, and I just don't get  
8 any response."

9 Mr. Matthews does not have a dissimilar  
10 story here. He tells me that he had tried  
11 repeatedly and called over and over and over again  
12 to make contact with the PO, and was getting very  
13 little response.

14 Now, I know that it is up to him to  
15 make a success of being out on supervision. And  
16 so -- and I have explained that to him. All that  
17 being said, I know that this court is familiar  
18 with sometimes the difficulties it is in staying  
19 in contact with your supervising officers.

20 All that being said, Your Honor, I just  
21 feel sending Mr. Matthews away to the penitentiary  
22 for an additional three years really -- as  
23 Mr. Naugle said, this really isn't, you know, the  
24 most heinous crime we have ever seen. This is a  
25 simple possession charge.